

# APPELLATE DEFENDER COMMISSION

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October 22, 2003

Justices of the Michigan Supreme Court  
Michigan Hall of Justice  
925 W. Ottawa Street  
P.O. Box 39022  
Lansing, MI 48909-7522

**RE: Delay Reduction Court Rules:** ADM File No. 2002-34, Proposed Amendment of Rules 7.204, 7.210, 7.211, 7.212, and 7.216 of the Michigan Court Rules

Dear Justices,

We are writing to respond to Chief Judge Whitbeck's characterization of the Resolution the Commission submitted to the Court on September 25, 2003. In his letter to the Justices of October 7, 2003, he states that the "centerpiece of our resolution is its contention that, 'The proposed rule will impose rigid and unrealistically short timelines at the expense of quality as well as causing human resource problems, all so that parties can 'hurry up and wait' while briefs sit in the Court of Appeals 'warehouse for six months.'"

We believe Chief Judge Whitbeck is mistaken in his identification of the "centerpiece". In fact, the centerpiece of our response is found in its closing bullet points:

"In sum, the Appellate Defender Commission opposes the proposed rules because it

- Will adversely affect the Commission's ability to fulfill its statutory mandate to develop and maintain an acceptable level of indigent criminal appellate defense services;
- Will unreasonably, and for no valid purpose, reduce the time for conducting the effective investigation necessitated by the limitations on subsequent post-conviction relief imposed by MCR 6.508;
- Will transfer costs back to counties from SADO, potentially creating Headlee Amendment violations, or require additional State resources unlikely to be forthcoming in the immediate future."

As the Court is aware, a large percentage of the Court of Appeal's docket is comprised of criminal cases

with appointed appellate counsel (either SADO or MAACS). These proposed changes adversely affect those who are charged with representing the most disadvantaged people in the justice system, at a time when funding cuts are devastating. Minor, and as yet unrealized, gains in time reductions should not be borne on the backs of these indigent defendants.

Our concern is for fundamental fairness in the process. We believe that both the clients we serve and the appellate process benefit if we develop and maintain a cadre of experienced criminal defense appellate attorneys. To do so it is imperative that they be able to handle a volume of cases sufficient to maintain a living in this specialty area. Aside from the fact that the proposed rule will not allow that to occur for either privately retained or assigned counsel, the crushingly low fees to these attorneys and the state's budget crises make it highly unrealistic that either fee increases or budget increases will solve the problem as it has for the Court of Appeals to get sufficient attorneys to reduce its warehouse. Testimony at the hearings on this rule made it painfully obvious that for both prosecution and defense alike, publicly funded counsel will not be able to meet the new time frames without quality suffering. There was not one single voice to the contrary.

We appreciate the care the Court is giving to this proposal. We believe effective improvements can be made if we work together on this and continue to support the efforts and proposals of the various task forces and work groups on delay reduction and on record and transcript production.

Respectfully submitted,

Appellate Defender Commission